

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:
RICHARD M. OSBORNE,
Debtor.

Case No. 17-17361-aih
Chapter 7
Judge Arthur I. Harris

**FIRST NATIONAL BANK OF PENNSYLVANIA’S OBJECTION TO DEBTOR’S
MOTION TO RESCHEDULE HEARING ON MOTION TO APPOINT
A CHAPTER 11 TRUSTEE AND FOR AN EXTENSION OF TIME
TO CONDUCT DISCOVERY**

Creditor First National Bank of Pennsylvania (“**FNB**”), successor by merger to Park View Federal Savings Bank, by and through its undersigned counsel, hereby objects (the “Objection”) to the *Motion to Reschedule Hearing on First National Bank of Pennsylvania’s Motion to Appoint a Chapter 11 Trustee and for an Extension of Time to Conduct Discovery* [Docket No. 407] (the “**Motion**”) filed by Richard M. Osborne, the debtor and debtor-in-possession herein (the “**Debtor**”). In support FNB states as follows:

FNB objects to the Debtor’s request to reschedule the hearing on FNB’s *Motion to Appoint a Chapter 11 Trustee* [Docket No. 308] (the “**Trustee Motion**”) and extend the discovery period. FNB respectfully submits that the relief requested by the Debtor is not in the best interest of the estate or its creditors. As set forth in the Trustee Motion, the Debtor is unfit to act as a fiduciary for his creditors, and any further delay in hearing the Trustee Motion will allow the Debtor to continue in control of his estate to the detriment of his creditors.

FNB filed the Trustee Motion on December 11, 2018—nearly three months ago. The initial hearing on the Trustee Motion took place two months ago on January 8, 2019. In weighing the propriety of appointing a trustee, the court is not required to conduct a full evidentiary hearing. *In re William A. Smith Constr. Co. Inc.*, 77 B.R. 124 (Bankr. N.D. Ohio 1987) (citing *In re Casco Bay Lines, Inc.*, 17 B.R. 946 (1st Cir. B.A.P. 1982)). However, at the initial hearing, the parties agreed to set a timeline for discovery and asked the Court to schedule an evidentiary hearing. The Court heard from counsel for FNB and the Debtor regarding a proposed timeline for discovery and an evidentiary hearing. Counsel for FNB suggested 45 days for discovery and 60 days for a hearing. Counsel for the Debtor suggested 60 days for discovery and 90 days for a hearing. The Court adopted the Debtor's suggested timeline and scheduled the discovery cut-off for slightly more than 60 days after the initial hearing and slightly more than 90 days for the hearing. Since the initial hearing, FNB has been working diligently to propound discovery upon third parties and depose the Debtor in a timely manner in order to comply with the deadlines established by the Court. The Debtor on the other hand has not propounded any discovery and instead has sought an extension of the deadlines agreed upon at the initial hearing.

If the Court grants the Debtor's requested extension, the Trustee Motion will have been pending for more than six full months before it is heard by the Court all while a debtor who is unfit to be a fiduciary is left to manage the estate.

In addition, while the Debtor recently made a settlement proposal, which FNB currently is reviewing, FNB does not believe that the tender of that settlement proposal warrants an extension of the discovery period and a continuance of the hearing. FNB

can evaluate and respond to the settlement proposal in short order while continuing to prepare for the hearing.

WHEREFORE, based upon all of the foregoing, FNB respectfully requests the entry of an Order denying the Motion and granting FNB such other and further relief as is proper and just.

Dated: March 7, 2019

Respectfully submitted,

/s/ Heather E. Heberlein

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2019, a true and correct copy of the foregoing was served via the Court's electronic case filing system on the following who are listed on the Court's Electronic Mail Notice List:

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